IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8902 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF DECD. HARMANBHAI SOMABHAI

Versus

SPECIAL LAND ACQUISITION OFFICER

Appearance:

MR GM AMIN for Petitioners

MR RC KODEKAR, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.C.PATEL

Date of decision: 11/09/2000

ORAL JUDGEMENT

(Per: J.M. Panchal, J.)

Rule. Mr. R.C. Kodekar, learned Assistant Government Pleader waives service of notice of Rule on behalf of the respondents. Having regard to the facts of the case, the petition is taken up for final hearing today.

2. By means of filing this petition under Article 226 of the Constitution, the petitioners have prayed to issue an appropriate writ, direction or order calling upon the Respondent No.1 to decide the application dated February 14, 2000 submitted by the petitioners under Section 28A of the Land Acquisition Act, 1894. The petitioners have further prayed to direct the Respondent No.1 to redetermine the amount of compensation payable to the petitioners on the basis of the judgment and award dated December 30, 1999 rendered by the learned Joint Civil Judge (Senior Division), Anand in Land Acquisition Cases No.1098/91, 1099/91 to 1104/91 and 1110/91 to 1128/91.

3. The lands belonging to the petitioners, particulars of which are mentioned in Annexure C to the petition, were acquired for Express Highway pursuant to publication of Notification issued under Section 4(1) of the Land Acquisition Act, 1894 (the 'Act' for short) in the Official Gazette on September 5, 1988. The Land Acquisition Officer had made his award under Section 11 of the Act on July 30, 1990 offering compensation to the claimants at the rate of Rs.350/- per Are. Certain claimants who were dissatisfied with the offer of compensation made by the Land Acquisition Officer had sought references and accordingly references were made to the Joint Civil Court, Anand which were registered as Land Acquisition Cases No.1098/91, 1099/91 to 1104/91 and 1110/91 to 1128/91. The Reference Court by judgment and award dated December 30, 1999 has awarded compensation to the claimants at the rate of Rs.1150/- per Are. As the court allowed to some of the claimants amount of compensation in excess of the amount awarded by the Special Land Acquisition Officer under Section 11 of the Act, the petitioners who were aggrieved by the award of the Land Acquisition Officer submitted an application under Section 28A of the Act for redetermination of the amount of compensation on the basis of the award of the court as according to them their lands were also acquired by the same Notification under Section 4(1) of the Act. The application submitted by the petitioners under Section 28A of the Act is produced on the record of the case at Annexure B to the petition. The grievance made

by the petitioners in the present petition is that though the application submitted under Section 28A of the Act is duly received by Respondent No.1, the same is not decided till date. Under the circumstances, the petitioners have filed the present petition and claimed reliefs to which reference is made earlier.

4. Though respondents are served, no affidavit-in-reply has been filed by any of them controverting the averments made in the petition.

5. We have heard the learned counsel for the parties and taken into consideration the documents forming part of the petition. It is not in dispute that the Special Land Acquisition Officer by his award dated July 30, 1990 had offered compensation to the claimants at the rate of Rs.350/- per Are. It is also not in dispute that some of the claimants who were aggrieved by the said offer had sought references and the Reference Court in Land Acquisition Cases No.1098/91, 1099/91 to 1104/91 and 1110/91 to 1128/91 has enhanced compensation to Rs.1150 per Are by judgment and award dated December 30, 1999. Section 28A provides that where the Court allows to some of the claimants any amount of compensation in excess of the amount awarded by the Special Land Acquisition Officer under Section 11 of the Act, those who are so aggrieved by the award and had not made an application to the competent authority under Section 18 of the Act can file an application under the said Section for redetermination of the amount of compensation on the basis of the award of the court, if their lands were also acquired by the same Notification under Section 4(1) of the Act. The statement on oath made by the petitioners that their lands were also acquired by the same Notification under Section 4(1) of the Act which was considered by the court while enhancing the compensation in favour of some of the claimants is not disputed by the respondents. Therefore, the petitioners were entitled to make application under Section 28A of the Act which is produced at Annexure B to the petition. The record of the case does not indicate that the application submitted by the petitioners under Section 28A of the Act is decided by the Respondent No.1. Under the circumstances, we are of the opinion that interest of justice would be served if Respondent No.1 is called upon to decide the application on merits within the time stipulated in this order.

6. For the foregoing reasons, the petition succeeds. The Respondent No.1 is directed to decide the application dated February 14, 2000 filed by the petitioners under

Section 28A of the Act on merits and in accordance with law as early as possible and preferably, within one month from the date of receipt of the writ. Rule is made absolute accordingly with no orders as to cost. The office is directed to send a copy of this order to Respondent No.1 immediately. It will also be open to the petitioners to produce a certified copy of this order before Respondent No.1 for necessary compliance. Direct Service permitted.

(J.M. Panchal, J.)

(M.C Patel, J.)

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